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**ORIGINAL**

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TIMOTHY PRICKETT,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL NO. **CV 13 00180 RLP**

COMPLAINT

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Comes now Plaintiff TIMOTHY PRICKETT ("Plaintiff"), by and through his attorneys, the Law Offices of Ian L. Mattoch, and hereby states his allegations, averments and claims for relief as follows:

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR 16 2013

at 1 o'clock and 50 min. M.  
SUE BEITIA, CLERK

## JURISDICTION AND VENUE

1. This is a premises liability personal injury claim under the Federal Tort Claims Act (“FTCA”). The Court has subject matter jurisdiction under 28 U.S.C. §§ 1346(b), 2671 *et. seq.*

2. On or about May 11, 2012, Plaintiff presented an administrative claim under the FTCA to the proper federal agency, the Department of the Navy, Office of the Judge Advocate General, Tort Claims Unit Norfolk (“Department of the Navy”).

3. On or about October 26, 2012, the Department of the Navy mailed a letter to Plaintiff denying Plaintiff’s administrative claim. This action has been filed on a timely basis within six (6) months of the mailing of the letter denying Plaintiff’s administrative claim.

4. Venue is proper in the United States District Court for the District of Hawai`i under 28 U.S.C. § 1402(b) because Plaintiff resided in this district when the subject January 29, 2011 incident took place, and because the subject incident giving rise to this action took place within this district.

## PARTIES

5. On the date of the subject incident, January 29, 2011, Plaintiff TIMOTHY PRICKETT (“Plaintiff”) was a resident of the City and County of Honolulu, State of Hawai`i. Plaintiff currently resides in Hayward, California.

6. At all times relevant herein, Defendant UNITED STATES OF AMERICA (“Defendant USA”) is a proper governmental agency defendant under the FTCA, and the entity that owned and/or leased and/or controlled Franklin D. Roosevelt Avenue, Makakilo, Hawai`i, to include the westbound sidewalk, adjacent electric and/or utility poles, and associated equipment (“subject premises”), or the relevant portion of the subject premises.

COUNT I  
PREMISES LIABILITY – NEGLIGENCE

7. All of the acts and occurrences alleged herein occurred within the City and County of Honolulu, State of Hawai`i.

8. On or about January 29, 2011, Plaintiff was riding his bicycle westbound on the sidewalk of Franklin D. Roosevelt Avenue, Makakilo, Hawai`i, when he was suddenly “clothes lined” at his neckline and knocked off his bicycle by a low-hanging and unseen guy wire or guy line from a nearby metal power pole (“subject incident”).

9. At all times relevant herein, Defendant USA owned, maintained, constructed, managed, supervised, leased and otherwise controlled the subject premises, to include Franklin D. Roosevelt Avenue, the metal power pole, and the low hanging guy wire.

10. At all times relevant herein, Defendant USA had an affirmative duty to maintain, inspect and keep the subject premises in a safe condition.

11. On or about January 29, 2011, and at all other times relevant herein, Defendant USA acted in a careless and negligent manner in that Defendant USA created and maintained, and otherwise knew or should have known of, unreasonably dangerous conditions on the subject premises, including the low-hanging guy wire, that proximately caused the subject incident, and because Defendant USA failed to properly construct, design, maintain, illuminate, inspect, secure, preserve, repair, abate, warn of, or in some other manner keep the subject premises in a safe condition.

12. On or about January 29, 2011, Defendant USA acted in a careless and negligent manner in that Defendant USA failed to properly construct, design, repair and/or maintain the subject premises in accordance with all applicable safety codes, standards, laws and regulations.

13. As a direct and proximate result of the negligence of Defendant USA, Plaintiff sustained severe and permanent injuries, suffered mental and emotional distress, incurred and will continue to incur medical and rehabilitative expenses, and lost wages and a loss of earning capacity, among other items of special and general damages.

COUNT II  
NEGLIGENCE – FAILURE TO MAINTAIN

14. Plaintiff realleges and incorporates by reference all of the allegations contained in the Complaint as though fully set forth and repeated here.

15. Defendant USA negligently failed to maintain the subject premises prior to and on the date of the subject incident, despite actual or constructive knowledge and/or notice of the dangerous conditions existing on the subject premises, including the low-hanging guy wire.

16. As a direct and proximate result of the aforesaid negligence, Plaintiff sustained injuries and damages as alleged herein.

COUNT III  
NEGLIGENCE – FAILURE TO WARN

17. Plaintiff realleges and incorporates by reference all of the allegations contained in the Complaint as though fully set forth and repeated here.

18. On or about January 29, 2011, and at all other times relevant herein, Defendant USA negligently failed to provide any warning, or any adequate warning, of the hazardous conditions on the subject premises, including the low-hanging guy wire, despite actual or constructive knowledge and/or notice of said conditions, thereby allowing unreasonably dangerous conditions to exist on the subject premises.

19. As a direct and proximate result of said negligence, Plaintiff sustained injuries and damages as alleged herein.

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WHEREFORE, Plaintiff demands judgment against Defendant USA for general and special damages in amounts that will be proven at trial, and for Plaintiff's costs, interest from the date of the incident, reasonable attorneys' fees, and such other relief as the Court deems just and proper. In presenting his administrative claim to Defendant USA, Plaintiff demanded the specific payment of Two Million Dollars and xx/100 cents (\$2,000,000.00).

DATED: Honolulu, Hawai'i, APR 16 2013.

A handwritten signature in black ink, appearing to read 'Ian L. Mattoch', written over a horizontal line.

IAN L. MATTOCH  
DANIEL P. KIRLEY  
Attorneys for Plaintiff